

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.788 OF 2004
IN
SUMMARY SUIT NO.3825 OF 2001

Vikrant Packaging Industries ..Plaintiffs

Vs.

Nandan Petrochem Ltd. ..Defendants

Mr.A.A.Kocharekar i/b G.V.Aiman for the plaintiffs

Ms.Jyotsna Pandhi i/b Mahesh Jain and Co. for the
defendants

CORAM : S.U.KAMDAR, J
DATED : 27TH SEPTEMBER, 2005

P.C.:

1. The present suit is filed on the basis of goods sold and delivered under two invoices and in respect of debit note for the sum of Rs.3 lacs and odd. The total claim is Rs. 4,94,352.52 alongwith interest thereon. It has been contended that the goods which are covered by the invoice and debit note were of an amount of Rs.3,03,804/-. There were disputes about the quality of the goods and thus, the defendants raised the debit notes in respect of the inferior quality of the goods pertaining to the earlier supply of goods which

were supplied prior to the said two invoices. However, it is an admitted position that the goods are utilised and not returned. It is not possible to accept the defence of the defendants that the said goods were of inferior quality and therefore, they are not liable to pay any amount. In that view of the matter, the said defence is rejected.

2. Now turning to the next defence that in respect of two invoices the defendants have not received the goods. I find that the averments to that effect are made in para 8 of the affidavit in reply which reads as under:

"The Defendants have not received the goods as detailed in Exhibits 'B' collectively to the plaint."

3. The learned counsel for the plaintiffs thereafter produced before me delivery challans which is at Ex.B to the plaint. After perusing the delivery challans and affidavit in reply of the deponent, Dhananjay Anand Chauhan, it is admitted

by the defendants that in fact in respect of Invoice at Ex.B goods have been duly received. Averments made in para 8 are erroneous and incorrect. The defence which has been set out by defendants and the conduct of the defendants does not inspire any confidence. In that view of the matter, so called defence of quality of goods is rejected.

4. However, with a view to give opportunity to the defendants I direct defendants to deposit Rs.4,50,000/- within 4 weeks, failing which plaintiffs will be entitled to decree. If the said amount is deposited the Prothonotary and Senior Master is directed to invest the same in any Nationalised Bank in Fixed Deposit initially for a period of 3 years and then renew the same from time to time till further orders of this court. If the amount is deposited then suit is to be transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from the date of deposit of the said amount. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within

four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.

5. I, infact proposed to issue a perjury notice for admitted false statement on oath and also contempt proceedings. However, learned counsel for defendants has persuaded me not to do so on the ground that the defendant has tendered his unconditional apology to the court. I therefore, refrain myself from taking any action in the matter. Summons for Judgment is dismissed accordingly.